

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

In Re: Avery Alan Mitchell)
SSN: XXX-XX-9938)
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Debtor,)
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KIMBERLY MITCHELL,)
)
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Plaintiff,)
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v.)
)
)
AVERY ALAN MITCHELL,)
)
)
Defendant.)
)
Case No. 19-81521-CRJ-7
Chapter 7
AP NO.:

COMPLAINT TO DETERMINE DEBTS TO BE NONDISCHARGABLE

COMES NOW, Kim Mitchell, a creditor in the above bankruptcy, and brings this Adversary Proceeding to determine that certain debts are nondischargeable support obligations. Creditor shows unto this Honorable Court as follows:

1. The Debtor filed a voluntary petition under 11 U.S.C. Chapter 7 on May 16, 2019 asking for relief pursuant to the provisions of the United States Bankruptcy Code. The Court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. Section 1334.
2. This is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2)(I) in that it is a complaint to determine the dischargeability of a particular debt.

Background

3. The Creditor, Kim Mitchell is the former spouse of the Debtor. The parties have two minor children. The Creditor and Debtor were divorced with the Final Entry of

Judgment on May 15, 2013. Under the terms of the Order, Debtor was to pay child support commencing March 1, 2013 in the amount of \$2,000.00 per month. Debtor was also to pay all medical related expenses not covered by insurance.

4. With regard to his former wife, Debtor was to pay \$2,000.00 per month as alimony commencing March 1, 2013. Additionally, the Order provided payment of alimony in gross in the sum of \$650,000.00 due in six annual installments of \$108,333.00.
5. Debtor defaulted in payment of these support obligations and the Circuit Court of Colbert County, Alabama entered a Judgment in the amount of \$236,666.00 on October 31, 2016. The Court amended the Order on January 24, 2017 providing for a judgment for her attorney's fees in the amount of \$5,000.00.
6. Debtor has failed to pay the above referenced Judgment and has continued in default on his support obligations.

COUNT I

7. Creditor incorporates the preceding allegations.
8. Pursuant to 11 U.S.C. Sections 523(a)(5) and 523 (a)(15) the Judgments entered by the Circuit Court of Colbert County, Alabama in the amounts of \$236,666.00 and \$5,000.00 are nondischargeable obligations.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, the Creditor requests that this Court enter an order declaring that the above Judgments are nondischargeable pursuant to 11 U.S.C. Section 523(a)(5) and 523(a)(15).

COUNT II

9. Creditor incorporates the preceding allegations.
10. Debtor has incurred additional child support arrearage in the amount of \$16,500.00 prior to the filing of the present bankruptcy case. Debtor has incurred additional alimony arrearage in the amount of \$18,000.00. Debtor has likewise failed to pay the remaining four (2) alimony in gross payments in the amount of \$216,666.00.
11. Pursuant to 11 U.S.C. Sections 523(a)(5) and 523 (a)(15) the above sum of \$251,166.00, due at the time of the filing of Debtor's case, is a nondischargeable obligation.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, the Creditor requests that this Court enter an order declaring that the above sum is a nondischargeable support obligation pursuant to 11 U.S.C. Section 523(a)(5) and 523(a)(15).

Respectfully submitted this 27th day of August, 2019.

/s/ Melissa W. Larsen

Melissa W. Larsen
Attorney for Debtor/Plaintiff
521 Madison St, Ste 201
Huntsville, Alabama 35801
(256) 970-4217